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WESTERN DISTRICT OF WASHINGTON



07-CV-00291-CMP

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEVIN ZWICKER, an individual, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

GENERAL MOTORS CORPORATION, a
Delaware corporation,

Defendant.

NO.

07-0291 JCC

**COMPLAINT — CLASS ACTION
FOR DAMAGES, INJUNCTIVE
RELIEF, AND RESTITUTION**

DEMAND FOR JURY TRIAL

I. INTRODUCTION

1.1 Plaintiff Kevin Zwickler brings this action for himself and on behalf of all similarly situated persons who purchased or leased defective Trucks or sport utility Trucks (as defined below) designed, manufactured, marketed, advertised, warranted, distributed, sold or leased by Defendant General Motors Corporation ("GM").

1.2 The defective Trucks and sport utility Trucks include the following models and makes: Chevrolet Avalanche, Chevrolet Silverado, Chevrolet Suburban, Chevrolet Tahoe, Chevrolet Trailblazer, GMC Denali, GMC Envoy, GMC Sierra, GMC Trailblazer, and Cadillac Escalade model years 2003 – 2007 (the "Trucks").

ORIGINAL

SEA 7523 Sum. ISSy

1.3 At the time of sale or lease, the Trucks contained a defect that causes the speedometers to register and display inaccurate speeds both when the Trucks are at a standstill and when they are moving. Many speedometers fail to register the vehicle's speed at all. This defect is unreasonably dangerous, as it can lead to accidents and cause drivers of Trucks to unwittingly exceed posted speed limits.

1.4 GM knew or should have known that the Trucks' speedometers are defective and not fit for their intended purpose of properly and effectively measuring the rate of speed of the Trucks. Nevertheless, GM actively has concealed and has failed to disclose the existence and nature of said defect from Plaintiff and the Class members at the time of purchase or lease and thereafter. Moreover, despite knowledge of the defect by virtue of customer complaints, GM has not recalled the Trucks to repair the defect, has not offered to its customers a suitable repair or replacement free of charge, has not offered to reimburse Truck owners and leaseholders, present or past, who incurred costs relating to speedometer repairs or replacement, and has not offered to reimburse Truck owners and leaseholders, present or past, who received traffic tickets or increased insurance premiums for exceeding posted rates of speed.

1.5 As a result of the defect in the Trucks' speedometers, Plaintiff and the members of the Class have suffered damages.

II. PARTIES

2.1 Plaintiff Kevin Zwicker is a Washington citizen who resides in Snohomish County, Washington. Plaintiff purchased a new 2004 Chevy Suburban. The truck's speedometer gradually failed, often reading only 30 miles per hour when Plaintiff was traveling approximately 60 miles per hour on the freeway. In April 2006 the speedometer stopped working completely. Because the 3 year, 36,000 mile warranty had expired, Plaintiff had to pay approximately \$100 to have the speedometer replaced under the extended warranty.

2.2 Defendant General Motors Corporation ("GM") is a Delaware corporation with its headquarters and principal place of business in the State of Michigan. Defendant does business in the state of Washington. Defendant designs, tests, manufacture, markets, advertises, warrants, distributes, sells or leases trucks and sports utility trucks under several prominent brand names, including, but not limited to: GMC, Chevrolet, Buick, Cadillac, and Pontiac throughout the United States.

III. JURISDICTION

3.1 This is a class action.

3.2 Members of the proposed plaintiffs' class are citizens of Washington, a state different from the home state of Defendant.

3.3 On information and belief, the aggregate claims of individual class members exceed \$5,000,000, exclusive of interest and costs.

3.4 As such, jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d).

IV. VENUE

4.1 Defendant, through its business of distributing, selling, leasing, marketing, or warranting its Trucks, has established sufficient contacts in this district such that it is subject to personal jurisdiction here. Pursuant to 20 U.S.C. § 1391(c), therefore, Defendant is deemed to reside in this district.

4.2 In addition, a substantial part of the events or omissions giving rise to these claims and a substantial part of the property that is the subject of this action are situated in this district.

4.3 As such, venue is proper in this Court pursuant to 28 U.S.C. § 1391(a).

V. APPLICABLE LAW

5.1 Washington State law applies to all claims in this action.

VI. FACTUAL ALLEGATIONS

6.1 For years, GM has designed, manufactured, marketed, advertised, warranted, distributed, sold and leased the Trucks. Upon information and belief, it has sold, directly or indirectly (through dealers and other retail outlets), hundreds of thousands, if not millions, of Trucks in Washington and nationwide.

6.2 Through various forms of media (including, but not limited to, television, print ads, brochures, the Internet, on-site brochures and promotional documents, catalogs, or product labelling) GM marketed, advertised and warranted that each Truck was fit for the ordinary purpose for which such Trucks were used and were free from defects in materials and workmanship.

6.3 In the Trucks' product guides and in other documentation, GM expressly warranted that during the warranty period — three years or 36,000 miles (4 years or 50,000 miles for the Escalade) — GM would replace any part of the Trucks which failed due to a defect in materials or workmanship. GM also expressly warranted that it would provide, free of charge, all costs to repair any such defective part.

6.4 Despite GM's representations and warranties, the Trucks contain a defect that causes the speedometers to register and display inaccurate speeds when the Trucks are at a standstill and when they are moving. This defect is substantially and unreasonably dangerous, as it can cause drivers of the Trucks to exceed posted speed limits and can, therefore, lead to accidents, which can result in personal injury or death. Indeed, the United States National Highway Traffic Safety Administration ("NHTSA") reports on its website how dangerous speeding can be:

Speeding is one of the most prevalent factors contributing to traffic crashes. The economic cost to society of speeding-related crashes is estimated by NHTSA to be \$40.4 billion per year. In 2005, speeding was a contributing factor in 30 percent of all fatal crashes, and 13,113 lives were lost in speeding-related crashes.

1 See http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSF2005/2005TSF/810_629/810629.htm
 2 (last accessed February 21, 2007).

3 6.5 Hundreds, if not thousands, of purchasers and lessors of the Trucks have
 4 experienced problems with the defective Truck speedometers. Complaints filed by consumers
 5 with the NHTSA and posted on the Internet demonstrate how widespread the defect is, how the
 6 defect manifests without warning, how aware GM is of the defect, and how potentially
 7 dangerous the defective condition is:

- 8 • NHTSA Complaint: "... While driving various speeds, the
 9 speedometer gauge displayed an incorrect reading of 120 mph.
 10 The vehicle was inspected by an independent repair shop, who
 11 determined the instrument cluster panel needed to be replaced.
The manufacturer was alerted." (Emphasis added).
- 12 • NHTSA Complaint: "My '04 Chevy Tahoe's speedometer with
 13 only 40,000 just quit working and is stuck on 55 even when it sits
 14 in the garage. After seeing *hundreds of similar complaints on-line*,
it appears to be a widespread problem with similar GM models."
 (Emphasis added).
- 15 • NHTSA Complaint: "I drive a 2004 Tahoe LS. I am a salesman
 16 and drive quite a bit and have racked up around 95,000 miles to
 17 this day. While driving, about a year ago, I noticed my
 18 speedometer acting erratically. The needle would jump or lurch
 19 past each number as it ascended through the numbers on the
 20 speedometer. It was more noticeable in the 55 to 75 mph range.
 21 The speed was still accurate so I viewed it as a non-issue.
 22 However as time went on the accuracy began to degrade as I
 23 started noticing the speedometer would stop at 40 mph while I was
 24 driving highway speeds. The degradation has continued up to now
 25 where I am lucky if the needle even moves off of 0 mph. When
 26 the needle does move it freezes at about 15 mph forcing me to
 27 guess at my speed by monitoring the tachometer. *This is a pretty
 dangerous situation and I would like to assume GM would look to
 remedy this situation quickly. The alternative is for the consumer
 to foot the bill of a \$500-\$1100 repair cost for a manufacturer's
 defect as many dealers already know that the 'cluster needs to be
 replaced'. This is a well-documented issue for GMs built in the
 2003 to 2005 model years which we, as consumers who have
 already invested at least \$40,000 on these trucks, need to see
 remedied.*" (Emphasis added).

- 1 • NHTSA Complaint: "We have seen dozen of incidents in the past
2 few months where the speedometer began ticking, became jerky,
3 or stopped working all together. Sometimes it will display a speed
4 obviously lower than the actual speed (like 30 on the highway
5 where we are going at least 55). Other times, it will sit at 0 while
6 the car is cruising down the road. *This problem is intermittent.*
7 Sometime stopping and restarting the car fixes it. We will go a
8 week or more without the problem and sometime we see it
9 multiple times in one day. We have not repaired the issue yet.
10 *Internet searching indicates that the average repair cost to be*
11 *between \$500 and \$1200. Similar searching indicates that this has*
12 *been seen by at least hundreds of people on variations of the Tahoe*
13 *(Suburban, Avalanche, etc.). There is even someone on eBay who*
14 *has a whole business around fixing broken instrument clusters for*
15 *these trucks."* (Emphasis added).
- 16 • Internet Posting: "I'm very interested to hear if your dealership has
17 any good solutions other that a \$450+ fix. *A local automotive place*
18 *just changed out our speed sensor for \$185 but within about 12 hrs*
19 *the speedometer was screwed up again in our 2004 Chevy Tahoe.*
20 *We took it back to the automotive place and now they're stumped.*
21 *Help!"* (Emphasis added).
- 22 • Internet Posting: "I don't think replacing the speed sensor will
23 work. Custom Complete Automotive in Columbia, MO replaced
24 the speed sensor and reset the computer in our '04 Tahoe. It
25 worked for about 12 hours before screwing up again (ie. 70 mph
26 will in the driveway). *Custom contacted Perry Chevrolet in*
27 *Columbia. They said they were familiar with the problem and they*
had seen 3 or 4 cases. They said the entire "cluster" needed to be
replaced (total cost from Custom will be \$550). We're having the
work done this week so hopefully that'll do the trick. I just hope it
doesn't happen again. So how can we push GM to make this a
recall? Can we write or call someone? Will they listen?"
(Emphasis added).
- Internet Posting: "I have a 2004 Yukon XL with 48,000 miles.
Yesterday, our Yukon started the same speedometer problem
(ranging from 70mph - 120mph). I took it to the dealer today.
When he heard what the problem was, he immediately wrote out
the repair information "Cluster replacement". Then he says, "Do
you have the extended warranty?". Which we do, so I don't even
know how much the repair is. I should be able to pick it up
tomorrow. *I had no idea so many trucks were having this same*
problem." (Emphasis added).

- 1 • Internet Posting: "I have a 2004 Tahoe w/ 42K miles. I'm having
2 the same problems that several of you have been talking about.
3 *When I called into the local GM dealership the service department*
4 *was well aware of the problem, and offered no suggestions but to*
5 *get it fixed. Now I find out that they are not replacing the*
6 *instrument cluster, but instead they're sending it off to be repaired.*
7 *That sucks!" (Emphasis added).*
- 8 • Internet Posting: "I have a 2003 2500IID. Going down interstate
9 yesterday, speedometer jumped all the way around to 120. I pulled
10 of at exit and it now reads 75, when stopped. This should be a
11 safety issue for GM. I called dealer, they said it is a common
12 problem, no recall though. *Called GM, they basically said tough*
13 *luck. This will be my last GM product."* (Emphasis added).
- 14 • Internet Posting: "I have a 2003 Chevy Sliverado 1500 w/ the
15 4.8L. With the same problem, *I took it to the dealer I bought it*
16 *from and the mechanic told me he was working on a 2005 with the*
17 *same problem and also he worked on others like this. I have been*
18 *using my GPS just so I get a guess on how fast I am going. I would*
19 *like to be added on your list of people to complain to GM cause*
20 *this is crap. I think the problem would be fixed by buying a new*
21 *rig."* (Emphasis added).
- 22 • Internet Posting: "I also have a 2003 Silverado 1500HD with the
23 same problem. My dealer is telling me that the entire cluster needs
24 to be pulled and sent for repair. He estimated the cost between
25 \$500-\$600. *They act as if this is a common problem but aren't*
26 *willing to do anything about it. I would appreciate any information*
27 *that anyone may have in getting this issue fixed."* (Emphasis
added).
- Internet Posting: "Once again all.....Please go to
www.nhtsa.dot.gov and post a formal complaint to them about
your problem. This is the only way we will have a recall happen.
You can't undo the battery to fix this and you don't want to burn
out your starter motor either! If we all complain to the NHTSA a
recall will happen. Until then, pray that you don't have or cause a
accident and kill someone or be killed! GM is going to pay dearly
if this happens!"
- Internet Posting: "I purchased a 2004 GMC Envoy in May 2006
with about 50,000 miles on it. At about 55,000 miles, I noticed my
speedometer would read 10-20 MPH off (i.e., on the highway
keeping up with traffic, it would say 45MPH, sometimes 80MPH).

Over the past few weeks it has gotten much worse, sometimes reading 0MPH on the freeway and sometimes 120MPH. My cruise control also stopped working. *I called GMC and filed a complaint (was referred to dealer as there are no current recalls). Dealer said instrument panel needs replacing, about \$500. I filed a complaint with the NHTSA (<http://www.nhtsa.dot.gov>). Hopefully if enough of us complain to the NHTSA about this defect, GMC will issue a recall. I was shocked to have this type of problem on a vehicle only 2 years old.* (Emphasis added).

- Internet Posting: "I have a 2004 GMC Yukon. The speedometer is malfunctioning, It displays incorrect erratic speeds, maxing out at 40mph no matter how fast I am driving. *Recently on a local freeway I almost had a accident when the traffic slowed ahead and I thought was going 30mph but my actual speed was about 65. It nearly killed me.* I have contacted GMC but have not had answer to this problem." (Emphasis added).
- Internet Posting: "I have a 2003 GMC Envoy (83K) fully loaded all the bells and whistles, but the speedometer is also erratic. Sometimes it works and most times it doesn't. *I was told by a GM tech that several GM SUV's and trucks have the same problem and should be recalled but nothing so far.* The repair will cost over 500.00, and despite my efforts GM refused to help. So like you guys I will drive using my tach until GM does the right thing and orders a recall." (Emphasis added).
- Internet Posting: "Filed all the complaints shockingly enough GM actually called me. They were saddened to hear I'm not happy with my 04 Z71 :(They say I need to take it to the dealer to get the Speedo "diagnosed" before they can look into about helping me out. Of course the diagnostic fee comes out of my pocket. seems to me there aint much to diagnose. They also did not have much to say about the laundry list of other things gone wrong."
- Internet Posting: "I have a 2004 Chevy Trailblazer. I mentioned my speedometer problem before. The local Chevy dealership is ordering an IPC. They tried "reprogramming" something, but that did not work. *When I originally mentioned the problem to the guy in the Service Center, he said he'd seen this problem often. I asked if there was a recall; he said no. He said the problem was not specific to a model and theorized Chevy/GM bought the part from a single manufacturer.* It'll cost \$450, but I do have extended warranty and am covered; just have to plop down \$50 for my deductible. I'll continue using my GPS until the part arrives; hopefully this week." (Emphasis added).

- 1 • Internet Posting: "I have a '04 Yukon XL Denali with 26000 miles
2 and driving from Florida to Pennsylvania on Monday (11/13/06)
3 our speedometer started acting crazy; we figured this out the hard
4 way when my husband received a speeding ticket in Virginia on I-
5 95 for doing 80 in a 55. From that moment on it got progressively
6 worse, not only did the speedometer read 0 when we had to be
7 driving 55+ at one point but the acceleration became horrible; the
8 car felt very sluggish and didn't seem to have any pick up at times.
9 Unfortunately we are out-of-state away from home and have an
10 appointment at a local dealership outside of Philly this coming
11 Monday; the car is under warranty but the problem comes and
12 goes... I have absolutely no faith this issue will be fixed before we
13 return to FL and after reading your posts I don't know if our local
14 dealership will fix it. We were actually considering the new Denali
15 in the future but I think this will be our last GMC." (Emphasis
16 added).
- 17 • Internet Posting: "So much for GM customer care....instead of
18 acknowledging that there is a problem their solution is to
19 recommend that I buy a service manual. I had already called the
20 local dealer and they wanted \$120 just for the diagnostic check.

21 Following is the GM response:

22 From: xxx@chevrolet.com
23 Sent: 11/18/2006 01:06:41 PM
24 To: xxx@chevrolet.com
25 Subject: RE: Chevrolet Other Comment
26 Service Request: 71-xxxxxx
27 Customer Relationship Specialist: L H
Dear Mr. E....,

Thank you for contacting the Chevrolet Customer Assistance Center. We appreciate you taking the time to write us in regards to your 2004 Chevrolet Tahoe. We apologize, but our function at the Customer Assistance Center is to answer any applicable warranty questions, to assist in navigation of the owner's manual and if necessary in unusual situations to act as liaisons between the customer and the dealership in the resolution of concerns. The dealerships are our technicians and are who we rely on for all technical information. They have first-hand knowledge of vehicle concerns and to answer technical questions that are specific to your vehicle. Because we sincerely desire to assist you we have included below several options to help you gain this information. We have included a location where you may purchase a shop manual,

1 information to help you locate a dealership to contact for advice,
2 and several websites that may be of assistance.

3 If you are not already working with a dealership another option
4 you may choose to pursue would be to contact your dealership of
5 choice for technical assistance. If you would like to search for
6 dealers, please visit our Web site and select the "dealer" option on
7 the tool bar. You may search for your preferred dealer by the
8 dealer name, the city and state or by your zip code. A second
9 option that I may provide would be for you to purchase a service
10 manual. If this option interests you we suggest that you contact
11 Helm Incorporated, the company responsible for the distribution of
12 official GM publications. The following are some materials that
13 can be ordered through Helm: Owners Manuals, Service Manuals,
14 Service Bulletins, Wiring Schematics, and Shop Manuals. You
15 may contact Helm for further information and pricing at xxx. This
16 information is also available on their web site at,

17 <http://www.helminc.com> , or you can write to:

18 Helm Incorporated 14310 Hamilton Avenue Highland Park, MI
19 48203 Also to assist you we have included a list of websites, which
20 specialize in assisting you to perform various repairs to your
21 vehicle. You may find the following web sites helpful. General
22 Motors neither endorses nor maintains these sites and will not be
23 responsible for any of its contents.

24 <http://www.morph44.com/auto.html>

25 <http://cartalk.cars.com/>

26 <http://www.2carpros.com/>

27 <http://www.autozone.com>

<http://www.alldata.com>

<http://www.chevymania.com/>

We have documented your concern under service request number
71-xxxxxx. Please refer to this number in any future contact with
the Customer Assistance Center. If you should need to contact us
in the future, please e-mail us again or call our Chevrolet Customer
Assistance Center at xxx. Customer Relationship Managers are
available Monday through Friday from 8:00 a.m. to 11:00 p.m.
Eastern Time. Please don't hesitate to contact us again if you need
further assistance. Again, thank you for contacting Chevrolet.

Sincerely,

The Chevrolet Consumer Support Team

Chevrolet supports Buckle Up America. I encourage you, your
family and your friends to always Buckle Up."

1 6.6 Customers have made warranty claims to GM and have reported the defect in
2 the Trucks' speedometers to GM directly and through its dealers so that GM is fully aware of
3 the defect in the Trucks. Despite this, GM actively has concealed the existence and nature of
4 said defect from Plaintiff and the members of the Class at the time of purchase or lease and
5 thereafter. Moreover, GM has not recalled the Trucks to repair the defect, has not offered to its
6 customers a suitable repair or replacement free of charge, has not offered to reimburse Truck
7 owners and leaseholders, present or past, who incurred costs relating to speedometer repairs,
8 and has not offered to reimburse members of the Class for traffic tickets or increased auto
9 insurance premiums that are a result of exceeding posted rates of speed due to the Class
10 Members' inability to determine from the Trucks' speedometers how fast they were going.

11 6.7 The members of the Class have not received the value for which they bargained
12 when they purchased or leased the Trucks. There is a difference in value between the Trucks as
13 warranted and the Trucks containing the defect coupled with an ineffective warranty.

14 6.8 The value of the Trucks has also been diminished as a result of the defect.

15 VII. TOLLING

16 7.1 Because the defects in the design or manufacture of the Trucks and their
17 speedometers are not detectable until manifestation of the damage, Plaintiff and the Class were
18 not reasonably able to discover the problem until long after purchasing or leasing the Trucks,
19 despite their exercise of due diligence.

20 7.2 Plaintiff and the Class Members had no realistic ability to discern that the
21 speedometer was defective until it failed. In addition, despite the exercise of due diligence,
22 Plaintiff and the Class Members could not reasonably have been expected to learn or discover
23 the fact that they were deceived, and that material information concerning the speedometer was
24 concealed from them, until manifestation of failure. Therefore, the claims being asserted by
25 Plaintiff and the Class Members present the typical scenario in which the discovery rule is
26 applicable.
27

7.3 Upon information and belief, Defendant has known of the defect in the Trucks and their speedometers since at least 2003, if not earlier, and has concealed from owners and lessees of the Trucks or failed to alert the owners and lessees of the Trucks regarding the defective nature of the speedometers.

7.4 Any applicable statutes of limitation have, therefore, been tolled by Defendant's concealment and denial of the facts alleged herein. Further, Defendant is estopped from relying on any statutes of limitation because of its concealment of the defective nature of the Trucks and their speedometers.

VIII. CLASS ACTION ALLEGATIONS

8.1 Plaintiff brings this lawsuit as a class action on behalf of himself and all other Washington residents similarly situated as members of a proposed plaintiff class pursuant to CR 23(a) and (b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

8.2 The Class is defined as:

All persons in Washington State who purchased or leased a model year 2003 through 2007 Chevrolet Avalanche, Chevrolet Silverado, Chevrolet Suburban, Chevrolet Tahoe, Chevrolet Trailblazer, GMC Denali, GMC Envoy, GMC Sierra, GMC Trailblazer, or Cadillac Escalade. Excluded from the Class are Defendant, any entity in which Defendant has a controlling interest or which has a controlling interest of Defendant, and Defendant's legal representatives, assigns and successors. Also excluded are the judge to whom this case is assigned and any member of the judge's immediate family.

8.3 Claims for personal injury are specifically excluded from the Class.

8.4 Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, Plaintiff is informed and reasonably believes the number is great enough such that joinder is impracticable. The disposition of the claims of these Class Members in a single class action will provide substantial benefits to all parties and to the Court.

1 8.5 The claims of the representative Plaintiff are typical of the claims of the Class in
2 that the representative Plaintiff, like all Class members, owns a Truck designed and
3 manufactured by Defendant in which the speedometers have failed or are failing prematurely.
4 The representative Plaintiff, like all Class members, has been damaged by Defendant's
5 misconduct in that he incurred or will incur the cost of repairing damage caused by the
6 defective Trucks and their speedometers or replacing the speedometers. Furthermore, the
7 factual bases of Defendant's misconduct is common to all Class members and represents a
8 common thread of fraudulent, deliberate, and negligent misconduct resulting in injury to all
9 members of the Class.

10 8.6 There are numerous questions of law and fact common to Plaintiff and the Class.
11 Those questions predominate over any questions that may affect individual Class Members,
12 and include the following:

13 8.6.1 Whether the Trucks and speedometers manufactured by GM are
14 defectively designed or manufactured such that they are not suitable for their intended use.

15 8.6.2 Whether Defendant knew or should have known of the inherent design
16 or manufacturing defect in its Trucks;

17 8.6.3 Whether Defendant fraudulently concealed from or failed to disclose to
18 Plaintiff and the Class the inherent problems with its Trucks;

19 8.6.4 Whether Defendant had a duty to Plaintiff and the Class to disclose the
20 inherent problems with its Trucks;

21 8.6.5 Whether the facts concealed or not disclosed by Defendant to Plaintiff
22 and the Class are material facts;

23 8.6.6 Whether as a result of Defendant's concealment of or failure to disclose
24 material facts, Plaintiff and the Class acted to their detriment by purchasing Trucks
25 manufactured by Defendant;
26
27

1 8.6.7 Whether Defendant breached its express warranty regarding its Trucks'
2 performance;

3 8.6.8 Whether Defendant failed to adequately warn Plaintiff and the Class
4 regarding the limitations of its Trucks;

5 8.6.9 Whether Defendant engaged in unfair competition or unfair deceptive
6 acts or practices when it concealed the limitations and failed to warn Plaintiff and Class
7 members of the defects in its Trucks;

8 8.6.10 Whether Defendant's conduct in marketing, selling, and leasing its
9 Trucks constitutes a violation of the Washington Consumer Protection Act, RCW 19.86 *et seq.*;

10 8.6.11 Whether Defendant should be declared financially responsible for
11 notifying all Class Members of the problems with its Trucks and for the costs and expenses of
12 repair and replacement of all such Trucks and their speedometers;

13 8.6.12 Whether Defendant's representations regarding its Trucks had a capacity
14 to deceive a substantial portion of the consuming public;

15 8.6.13 Whether Plaintiff and the Class are entitled to compensatory, exemplary,
16 and statutory damages, and the amount of such damages, including, among other things: (i)
17 compensation for all out-of-pocket monies expended by members of the Class for repairs of the
18 Trucks' speedometers, replacement of the Trucks' speedometers, and loss of use of the Trucks
19 while speedometers were being repaired or replaced; (ii) compensation for traffic tickets or
20 auto insurance premium increases which resulted for exceeding posted rates of speed due to
21 defective speedometers; (iii) the failure of consideration in connection with or difference in
22 value arising out of the variance between the Trucks as warranted and the Trucks containing
23 the defect; and (iv) the diminution of resale value of the Trucks resulting from the defect;

24 8.6.14 Whether Plaintiff and the Class are entitled to replacement of their
25 defective Truck speedometers with non-defective Truck speedometers;
26
27

1 8.6.15 Whether Defendant should be ordered to disgorge, for the benefit of the
2 Class, all or part of the ill-gotten profits it received from the sale of defective Trucks and
3 speedometers, or to make full restitution to Plaintiff and the members of the Class.

4 8.7 Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff
5 has retained counsel with substantial experience in prosecuting consumer class actions, and
6 specifically actions involving defective products. Plaintiff and his counsel are committed to
7 prosecuting this action vigorously on behalf of the Class, and have the financial resources to do
8 so. Neither Plaintiff nor his counsel has any interests adverse to those of the Class.

9 8.8 Plaintiff and the members of the Class have all suffered and will continue to
10 suffer harm and damages as a result of Defendant's unlawful and wrongful conduct. A class
11 action is superior to other available methods for the fair and efficient adjudication of the
12 controversy. Absent a class action, most members of the Class likely would find the cost of
13 litigating their claims to be prohibitive, and would have no effective remedy at law. Because of
14 the relatively small size of the individual Class member's claims, it is likely that only a few
15 Class Members could afford to seek legal redress for Defendant's misconduct. Absent a class
16 action, Class Members will continue to incur damages and Defendant's misconduct will
17 continue without remedy. Class treatment of common questions of law and fact would also be
18 superior to multiple individual actions or piecemeal litigation in that class treatment will
19 conserve the resources of the courts and the litigants, and will promote consistency and
20 efficiency of adjudication.

21 **IX. FIRST CLAIM FOR RELIEF**
22 **(Actionable Misrepresentation)**

23 9.1 Plaintiff hereby incorporates by reference the allegations contained in the
24 preceding paragraphs of this Complaint.

25 9.2 Defendant knew or should have known the speedometers installed in its Trucks
26 were defectively designed or manufactured, would fail prematurely, were not suitable for their
27 intended use, and otherwise were not as warranted and represented.

1 9.3 Defendant fraudulently, negligently, or recklessly concealed from or failed to
2 disclose to Plaintiff and the Class the defective nature of the speedometers.

3 9.4 Defendant was under a duty to Plaintiff and the Class to disclose the defective
4 nature of the speedometers because (i) Defendant was in a superior position to know the true
5 state of the facts about the design or manufacturing defect in the speedometers in its Trucks
6 because the design or manufacturing defect is latent; (ii) Defendant made partial disclosures
7 about the quality of the Trucks without revealing the defective speedometers; and
8 (iii) Defendant actively concealed the defective nature of the speedometers from Plaintiff and
9 the Class.

10 9.5 The facts concealed or not disclosed by Defendant to Plaintiff and the Class are
11 material facts in that a reasonable person would have considered those facts to be important in
12 deciding whether or not to purchase Defendant's Trucks. Had Plaintiff and the Class known
13 the defective nature of the speedometers, they would not have purchased them or would have
14 paid less for them.

15 9.6 Defendant intentionally, recklessly, or negligently concealed or failed to
16 disclose the true nature of the design or manufacturing defect in the speedometers in its Trucks
17 for the purpose of inducing Plaintiff and the Class to act thereon, and Plaintiff and the Class
18 justifiably relied to their detriment upon the truth and completeness of Defendant's
19 representations about its Trucks. This is evidenced by Plaintiff's and Class members' purchase
20 or lease of Defendant's Trucks.

21 9.7 Defendant continued to conceal the defective nature of the speedometers even
22 after members of the Class began to report problems. Indeed, Defendant continues to cover up
23 and conceal the true nature of the problem.

24 9.8 As a direct and proximate cause of Defendant's misconduct, Plaintiff and the
25 Class have suffered and will continue to suffer actual damages in (i) expending out-of-pocket
26 monies for repairs of the Trucks' speedometers, replacement of the Trucks' speedometers and
27

1 loss of use of the Trucks while speedometers were being repaired or replaced; (ii) receiving
 2 traffic tickets or auto insurance premium increases which resulted for exceeding posted rates of
 3 speed due to defective speedometers; (iii) the failure of consideration in connection with or
 4 difference in value arising out of the variance between the Trucks as warranted and the Trucks
 5 containing the defect; and (iv) the diminution of resale value of the Trucks resulting from the
 6 defect.

7 9.9 As a result of Defendant's misconduct, Plaintiff and the Class are entitled to
 8 compensatory damages, attorneys' fees, costs, and interest thereon.

9
 10 **X. SECOND CLAIM FOR RELIEF**
(Violation of Washington's Consumer Protection Act,
RCW 19.86 et seq.)

11 10.1 Plaintiff hereby incorporates by reference the allegations contained in the
 12 preceding paragraphs of this Complaint.

13 10.2 Defendant engaged in unfair or deceptive acts or practices when it: (i) failed to
 14 disclose its Trucks, and the speedometers in its Trucks, were not of a particular standard,
 15 quality, or grade; (ii) failed to disclose, at and after the time of purchase or lease and repair, any
 16 and all known material defects or material nonconformity of the Trucks, including the
 17 speedometers of the Trucks; (iii) failed to disclose at the time of purchase or lease that the
 18 Trucks, including the speedometers of the Trucks, were not in good working order, were
 19 defective, and were not fit for their intended purpose; (iv) failed to give adequate warnings and
 20 notices regarding the use, defects, and problems with the Trucks' speedometers to customers
 21 and consumers who purchased or leased said Trucks, despite the fact that Defendant possessed
 22 prior knowledge of the inherent defects to the Trucks' speedometers; (v) failed to disclose,
 23 either through warnings or recall notices, or actively concealed the fact that the Trucks'
 24 speedometers were defective, despite the fact that Defendant learned of such defects through
 25 consumer complaints as early as 2003, if not before; (vi) caused Plaintiff and members of the
 26 Class to expend sums of money at its dealerships to repair or replace the Trucks' speedometers,
 27

1 despite Defendant's knowledge of the defect; and (vii) where Defendant replaced the Trucks'
 2 speedometers pursuant to warranty provisions, Defendant utilized equally defective
 3 speedometers and speedometer mechanisms such that the defect was not corrected even though
 4 Defendant informed consumers that the defect was corrected.

5 10.3 Defendant either knew or should have known its Trucks and their speedometers
 6 were defectively designed or manufactured, would fail prematurely, were not suitable for their
 7 intended use, and otherwise were not as warranted by Defendant.

8 10.4 Defendant's unfair or deceptive acts or practices repeatedly occurred in
 9 Defendant's trade or business, and were capable of deceiving a substantial portion of the
 10 purchasing public.

11 10.5 As a direct and proximate cause of Defendant's unfair or deceptive acts or
 12 practices, Plaintiff and the Class have suffered and will continue to suffer actual damages in (i)
 13 expending out-of-pocket monies for repairs of the Trucks' speedometers, replacement of the
 14 Trucks' speedometers and loss of use of the Trucks while speedometers were being repaired or
 15 replaced; (ii) receiving traffic tickets or auto insurance premium increases which resulted from
 16 exceeding posted rates of speed due to defective speedometers; (iii) the failure of consideration
 17 in connection with or difference in value arising out of the variance between the Trucks as
 18 warranted and the Trucks containing the defect; and (iv) the diminution of resale value of the
 19 Trucks resulting from the defect.

20 10.6 As a result of Defendant's unfair and deceptive practices, Plaintiff and the Class
 21 are entitled to injunctive relief in the form of restitution or disgorgement of funds paid to
 22 Defendant to purchase their Trucks, or to repair and replace the Trucks' speedometers, as well
 23 as compensatory and treble damages, attorneys' fees, and costs pursuant to RCW 19.86 *et seq.*

24 **XI. THIRD CLAIM FOR RELIEF** 25 **(Unjust Enrichment)**

26 11.1 Plaintiff hereby incorporates by reference the allegations contained in the
 27 preceding paragraphs of this Complaint.

1 11.2 Defendant received monies as a result of Plaintiff's and Class members'
2 purchases and leases of its Trucks, and Defendant wrongfully accepted and retained these
3 benefits to the detriment of Plaintiff and Class members.

4 11.3 Defendant's enrichment at the expense of Plaintiff and Class members was
5 unjust.

6 11.4 As a result of Defendant's wrongful conduct, Plaintiff and the Class are entitled
7 to restitution from and institution of a constructive trust disgorging all profits, benefits, and
8 other compensation obtained by Defendant, plus attorneys' fees, costs, and interest thereon.

9 **XII. FOURTH CLAIM FOR RELIEF**
10 **(Breach of Express Warranty)**

11 12.1 Plaintiff hereby incorporates by reference the allegations contained in the
12 preceding paragraphs of this Complaint.

13 12.2 Plaintiff and the Class members have entered into certain written warranty
14 agreements with GM. Pursuant to the express warranty, GM would provide Plaintiff and the
15 Class members with Trucks that were in proper working order and that were fit for their
16 intended purpose. GM was further obligated to repair or service any defects or problems with
17 the Trucks that Plaintiff and the Class members experienced. In exchange for these duties and
18 obligations, GM received payment of the purchase or lease price for the above-mentioned
19 Trucks from Plaintiff and the Class members.

20 12.3 Moreover, the advertisements, models and samples, and other similar uniform
21 representations disseminated by GM regarding the Trucks were, and are, affirmations of fact or
22 promises with regard to the performance and quality of those Trucks. These advertisements,
23 models and samples, and other similar representations, formed, in whole or in part, the basis of
24 the bargain as between GM and members of the Class, and constituted express warranties that
25 the Trucks would conform thereto. As described above, Class Members' Trucks did not
26 conform to these warranties, representations, models and samples.

1 12.4 The express warranties provided to Plaintiff and other members of the Class,
2 were limited to 36 months or 36,000 miles (4 years or 50,000 miles for Escalade). However,
3 such limitation was patently unconscionable and unenforceable because GM was aware of the
4 defect in the Trucks' speedometers prior to selling or leasing the Trucks and knew or should
5 have known that the Trucks' speedometers would not properly register the rate of speed of the
6 Trucks at a time beyond the relevant warranty period. In addition, GM used its superior
7 knowledge of the existing defect to offer a warranty which it knew or should have known
8 would not cover the Trucks' speedometer defects which GM knew existed in those
9 speedometers at the time of purchase or lease of the Trucks by Plaintiff and members of the
10 Class. The limitations in the express warranties also were unconscionable because, among
11 other things, members of the Class had no meaningful choice in determining those time
12 limitations; the terms were not specifically negotiated or bargained for by the Class Members;
13 the limited warranties unreasonably favored GM over members of the Class; and a gross
14 disparity in bargaining power existed as between GM and members of the Class.

15 12.5 GM breached the aforementioned express warranties by providing Plaintiff and
16 the Class with Trucks with defective speedometers and failing to repair or replace those
17 defective speedometers.

18 12.6 Moreover, any remedy that GM has provided to Plaintiff and other members of
19 the Class has failed of its essential purpose in that Plaintiff or members of the Class have
20 experienced problems with the Trucks' speedometers even after replacement or repair of such
21 speedometers.

22 12.7 By virtue of its knowledge of the defect and its knowledge of the experience of
23 purchasers and lessees of the Trucks who complained of the defect in the Trucks and the
24 Trucks' speedometers, GM has received notice of the breach of the warranties.

25 12.8 The element of privity exists vis-a-vis GM and members of the Class because,
26 inter alia: (i) GM has had direct written communications with members of the Class with regard
27

1 to the Trucks in the form of standardized warranty forms, registration cards and other similar
 2 documents; (ii) GM has had direct communications with members of the Class with regard to
 3 the Trucks through television, newspaper and magazine advertisements; (iii) the dealers that
 4 have sold and leased the Trucks to and communicated with members of the Class are agents, in
 5 law or in fact, of GM; (iv) GM has entered into contracts with members of the Class in
 6 connection with the assurance of warranties; and (v) Plaintiff and members of the Class are
 7 third-party beneficiaries of warranties that ran from GM to its agents, the dealers.

8 12.9 As a result of the foregoing, the Plaintiff and the Class Members have suffered
 9 damages that were directly and proximately caused by the defective Trucks and their
 10 speedometers. Plaintiff and the proposed Class Members are entitled to damages in an amount
 11 to be determined at trial.

12 **XIII. FIFTH CLAIM FOR RELIEF** 13 **(Breach of Implied Warranties)**

14 13.1 Plaintiff hereby incorporates by reference the allegations contained in the
 15 preceding paragraphs of this Complaint.

16 13.2 GM impliedly represented and warranted that the Trucks were free of defects;
 17 merchantable; and fit for their intended purpose. Pursuant to the warranty, GM warranted it
 18 would provide Plaintiff and the Class members with Trucks that were in proper working order
 19 and that were fit for their intended purpose. This included the speedometers of these Trucks.
 20 GM was further obligated to repair or service any defects or problems with the Trucks,
 21 including problems with the speedometers, that Plaintiff and the Class members experienced.
 22 In exchange for these duties and obligations, GM received payment of the purchase or lease
 23 price for the above-mentioned Trucks from Plaintiff and the Class members.

24 13.3 GM breached these representations and implied warranties because the defective
 25 speedometers that Defendant installed in the Trucks purchased or leased by Plaintiff and the
 26 Class members were not fit for the particular purpose for which they were intended. GM made
 27 or allowed these misrepresentations to be made with the intent of inducing Plaintiff and the

1 other members of the Class to purchase or lease the Trucks. If Plaintiff and the members of the
2 Class had known the true facts, they would not have purchased or leased the Trucks or paid as
3 much as they did for the Trucks.

4 13.4 By virtue of its knowledge of the defect and of the experience of purchasers and
5 lessees of the Trucks who complained of the defect in the Trucks, GM has received notice of
6 the breach of the warranties.

7 13.5 The element of privity exists vis-a-vis GM and members of the Class because,
8 inter alia: (i) GM has had direct written communications with members of the Class with regard
9 to the Trucks in the form of standardized warranty forms, registration cards and other similar
10 documents; (ii) GM has had direct communications with members of the Class with regard to
11 the Trucks through television, newspaper and magazine advertisements; (iii) the dealers that
12 have sold and leased the Trucks to and communicated with members of the Class are agents, in
13 law or in fact, of GM; (iv) GM has entered into contracts with members of the Class in
14 connection with the assurance of warranties; and (v) Plaintiff and members of the Class are
15 third-party beneficiaries of warranties that ran from GM to its agents, the dealers.

16 13.6 As a result of the foregoing, the Plaintiff and the members of the Class have
17 suffered damages that were directly and proximately caused by the defective Trucks and their
18 speedometers. Plaintiff and the members of the Class are entitled to damages in an amount to
19 be determined at trial.

20 **XIV. RELIEF REQUESTED**

21 Plaintiff, on behalf of himself and all others similarly situated, request the Court enter
22 judgment against Defendant, as follows:

23 14.1 An order certifying the proposed plaintiff Class, designating Plaintiff as named
24 representative of the Class, and designating the undersigned as Class Counsel;

25 14.2 A declaration that Defendant is financially responsible for notifying all Class
26 members of the problems with its Trucks;

1 14.3 An order enjoining Defendant from further deceptive advertising, marketing,
2 distribution, and sales and lease practices with respect to its Trucks, to cease its warranty
3 claims program, and to remove and replace Plaintiff's and Class members' speedometers with a
4 suitable alternative product;

5 14.4 An award to Plaintiff and the Class of compensatory, exemplary, and statutory
6 damages, including interest thereon, in an amount to be proven at trial;

7 14.5 A declaration that Defendant must disgorge, for the benefit of the Class, all or
8 part of the ill-gotten profits it received from the sale or lease of its Trucks, or to make full
9 restitution to Plaintiff and the members of the Class;

10 14.6 An award of attorneys' fees and costs, as allowed by law;

11 14.7 An award of pre-judgment and post-judgment interest, as provided by law;

12 14.8 For leave to amend the Complaint to conform to the evidence produced at trial;

13 and

14 14.9 Such other or further relief as may be appropriate under the circumstances.

15 **XV. DEMAND FOR JURY TRIAL**

16 15.1 Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury of any and all
17 issues in this action so triable of right.

18 DATED this 23rd day of February, 2007.

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21

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